

1 THE HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 CESAR L. MARTINEZ,

11 Plaintiff,

12 vs.

13 MICHAEL J. ASTRUE,
14 Commissioner of Social Security,

15 Defendant.

Case No.: 06-5624 RBL

ORDER DENYING SUPPLEMENTAL
ATTORNEYS FEES

16 Pending before the Court is Plaintiff's Motion for Supplemental Attorney's Fees (Dkt. #25).

17 Plaintiff seeks attorney's fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412, for
18 expenses incurred during the course of fee litigation. Defendant argues that this request for supplemental
19 fees is untimely and should be denied.

21 **I. FACTUAL AND PROCEDURAL BACKGROUND**

22 This dispute arises in the wake of a suit by Mr. Martinez seeking review of a decision by the
23 Commissioner of Social Security that denied him disability benefits. On August 7, 2007, this Court sided
24 with Mr. Martinez and reversed and remanded the case. On November 5, 2007, Mr. Martinez timely
25 applied for \$6,613.32 in attorney's fees under the EAJA (Dkt. #19), and the Commissioner contested the
26 application (Dkt. #20). Mr. Martinez' original application stated: "In the event that this Motion is

opposed, Plaintiff reserves the right to amend the amount of the EAJA fees requested for the additional time expended.”

This Court, on December 27, 2007, granted fees to Mr. Martinez (Dkt. #24). Five months later, on May 29, 2008, Mr. Martinez filed the motion at hand seeking \$1,598.02 in expenses incurred during the earlier fee litigation (Dkt. #25).

II. ISSUE

The Commissioner argues that Mr. Martinez' motion is a new EAJA application and is untimely because it was filed more than 30 days after final judgment on the first round of fee litigation—in violation of the EAJA. (Def.'s Resp., p. 3) (Dkt. #26). Mr. Martinez, on the other hand, views his motion not as a new application but as an amendment to his first, timely-filed motion. (Pl.'s Reply, p. 1) (Dkt. # 1). Under Mr. Martinez' view, the doctrine of relation back permits the amendment, and the 30 day limitation is irrelevant.

The Court must decide whether Mr. Martinez' Motion for Supplemental Attorney's Fees is a new application under the EAJA and therefore subject to the 30 day limitation, or if the motion is an amendment that can relate back to Mr. Martinez' earlier, timely EAJA application. Because policy and precedent compel viewing the motion as an amendment, the Court must decide a second issue: whether supplemental fees are warranted in view of the delay between the original fee litigation and the request for supplemental fees (Dec. 27th to May 29th).

III. DISCUSSION

The purpose of the EAJA is “to eliminate the barriers that prohibit small businesses and individuals from securing vindication of their rights in civil actions and administrative proceedings brought by or against the Federal Government.” *Scarborough v. Principi*, 541 U.S. 401, 406 (2004), quoting H.R. Rep No. 96-1005, at 9 (1980). To achieve this goal, the EAJA awards costs and attorney’s fees to parties

1 prevailing against the Government. 28 U.S.C. §4212(d)(1)(A)-(B). A party seeking attorney's fees must
 2 submit an application meeting four criteria: (1) it must show that the party prevailed; (2) it must specify the
 3 amount sought; (3) it must allege that the position of the United States was not substantially justified; and
 4 (4) it must be filed within 30 days of final judgment. 28 U.S.C. §4212 (d)(1)(B). A court may, in its
 5 discretion, limit an award for "conduct which unduly and unreasonably protracted the final resolution"
 6 28 U.S.C. §4212 (d)(1)(C). Lastly, relation back of amendments has been expressly permitted for EAJA
 7 motions. *Scarborough*, 541 U.S. at 417-18 (noting that relation back is equitable doctrine applying to
 8 motions as well as pleadings).

10
 11 Mr. Martinez argues that his motion for supplemental fees, filed on May 29th, relates back to his
 12 first EAJA motion, filed on November 5th of last year and amends the amount sought. In response, the
 13 Commissioner argues that this is a second EAJA application. As such, Mr. Martinez was required to file it
 14 within 30 days of final judgment on the first application. Because this Court granted fees to Mr. Martinez
 15 on December 27, 2007, and that judgment became final, under Fed. R. App. P. 4(a)(1)(B), 60 days
 16 later—on February 27th—Mr. Martinez would have had to file this second application before March 27th.
 17 The Commission contends that because Mr. Martinez did not file this application until May 29th, it must be
 18 denied.

20 A. Judicial efficiency requires that Mr. Martinez' current motion be viewed as an amendment
 21 rather than a new EAJA application.

23 In the interest of judicial efficiency, Mr. Martinez' motion for supplemental fees must be viewed as
 24 part of one fee litigation rather than as a subsequent application. The Supreme Court endorsed this
 25 approach in *Commissioner I.N.S. v. Jean*, 496 U.S. 415 (1990), where a suit brought by Haitian refugees
 26 to contest procedures of the Immigration and Naturalization Service devolved into a fee dispute. As in this
 27 case, the Refugees were awarded fees under the EAJA and then sought fees for the fee litigation itself.
 28

1 The Government, however, argued that supplemental fees were inappropriate because the Government was
 2 substantially justified in contesting the primary fees. *Id.* at 157. The Refugees, in turn, argued that the fee
 3 litigation was part of the whole. They stressed that requiring a new round of litigation to determine if the
 4 Government was substantially justified in litigating the earlier fees was duplicitous. *See Id.*
 5

6 The Supreme Court determined that treating the case as an integral whole was superior to creating
 7 a chain of litigation over fees. *Id.* at 162 (“the EAJA favors . . . treating a case as an inclusive whole,
 8 rather than as atomized line-items.”). Indeed, the Court feared that requiring a subsequent finding of “no
 9 substantial justification” would “theoretically . . . spawn a ‘Kafkaesque judicial nightmare’ of infinite
 10 litigation to recover fees for the last round of litigation over fees.” *Id.* at 163. Thus, judicial resources are
 11 conserved by ensuring that “attorney's fees [do] not result in a second major litigation.” *Id.*
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13 In sum, the policy of judicial efficiency compels this Court to treat Mr. Martinez’ current motion as
 14 an amendment rather than a second application. The issue remains, however, whether the Court should
 15 award the supplemental fees.
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17 B. Supplemental fees are denied because of unreasonable delay.

18 Mr. Martinez’ amendment for supplemental fees must be denied because he offers no reason why
 19 this motion comes more than five months after the first round of fees was awarded. This Court, as noted
 20 above, may, in its discretion, limit an award for “conduct which unduly and unreasonably protracted the
 21 final resolution . . .” 28 U.S.C. §4212 (d)(1)(C).
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23 The EAJA gives an attorney, at most, 90 days to prepare and file for fees after resolution of the
 24 main suit (60 days before judgment becomes final and then 30 days to file). A five month delay in filing a
 25 mere amendment is unreasonable when the law provides only 90 days to file the primary application.
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27 Further, a five month delay is unreasonable because Mr. Martinez must have known the number of
 28 hours he spent drafting his reply at the time he filed it on November 29, 2007 (Dkt. #21). This

1 amendment, seeking fees for nine and one-half hours of work, could have been included at that time. Even
2 assuming a valid reason for postponing his amendment until after the Court resolved the original
3 application (e.g., anticipating further expenditure of time and wishing to avoid multiple amendments), Mr.
4 Martinez' absence of justification for his delay compels this Court to deny the motion for supplemental
5 fees.

7 **IV. CONCLUSION**

8 Although Mr. Martinez' motion is viewed as an amendment to his timely EAJA application, and
9 thus relates back, the Court **DENIES** Plaintiff's Motion for Supplemental
10 Attorney's Fees (Dkt. #25) because the amendment is unreasonably tardy.
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12 Dated this 23rd day of June, 2008

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14 Ronald B. Leighton

15 RONALD B. LEIGHTON
16 UNITED STATES DISTRICT JUDGE
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